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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,956	12/06/2006	Michael Falck Schmidt	PATRADE	8752
49801	7590	09/15/2008	EXAMINER	
JAMES C. WRAY			BOEHLER, ANNE MARIE M	
1493 CHAIN BRIDGE ROAD				
SUITE 300			ART UNIT	PAPER NUMBER
MCLEAN, VA 22101			3611	
			MAIL DATE	DELIVERY MODE
			09/15/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/581,956	SCHMIDT, MICHAEL FALCK	
	<b>Examiner</b>	<b>Art Unit</b>	
	Anne Marie M. Boehler	3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 July 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 2 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/21/2008</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____.                         |

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Hudis (USPN 3,664,448).

Hudis shows a vehicle with an undercarriage 21, having forwardmost and hindmost protruding parts 24, and lower portions 62, 63, 66, 67, that extend between front and rear traction belts 32 and support tools. The traction belts are mounted under the protruding parts. Each belt is movable vertically via hydraulic cylinders 27-29 and is pivotable about a transverse pivot axis 35, for vertical movement.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Swisher (USPN 4,140,420)

Swisher shows a vehicle with an undercarriage 18, having forwardmost and hindmost protruding parts and a lower portion that extend between front and rear traction belts 32 and supports a tool. The traction belts are mounted under the protruding parts. Each belt is movable vertically via hydraulic cylinders and is pivotable about a transverse pivot axis 36, for vertical movement.

4. Applicant's arguments filed July 7, 2008 have been fully considered but they are not persuasive.

Applicant argues that Hudis fails to teach the claimed combination because Hudis does not include an undercarriage that, in its lowered position, is lowered down

between the tracks. The examiner disagrees. Hudis shows a frame with underslung carriages 62, 63, 66, 67 that hold tools. These carriages are clearly positioned between the tracks when in their lowered position (see Figures 6, 8, and 12).

Page 7 of applicant's remarks are unclear. In lines 7 and 8, applicant indicates the protruding parts are extensions of the undercarriage. However, in lines 15, applicant indicates the belt unit includes the protruding part. The claims are not clear on this point. Therefore, it appears that either interpretation is reasonable. The claims do not specifically require a protruding part that moves vertically with the track or track unit. The claims do not recite a protruding part that is pivotable about a transverse axis. Hudis shows a track unit (including a belt, 34, and support 32) that moves vertically and pivots about a horizontal axis 35. Therefore, the claim language is believed to be met.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dubay and Swisher (USPN 3,540,360) each show a road working machine with vertically movable wheels or tracks.

Swisher (USPN 5,190,298) shows a road working machine with an undercarriage with projections 54-60 that are positioned above and support wheels 24-30 for vertical movement. The projections are vertically movable about a horizontal pivot axis.

Snow shows a tracked vehicle with a central lowered undercarriage and vertically movable tracks.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne Marie M. Boehler whose telephone number is 571-272-6641. The examiner can normally be reached on 7:30-5:00, Monday-Thursday, and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6612. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3611

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anne Marie M Boehler/  
Primary Examiner, Art Unit 3611